

Exhibit 4



KeyCite Yellow Flag - Negative Treatment

Disagreed With by [In re Velazquez](#), 5th Cir.(Tex.), October 17, 2011

437 Fed.Appx. 314

This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fifth Circuit Rules 28.7, 47.5-3, 47.5-4. (Find CTA5 Rule 28 and Find CTA5 Rule 47)

United States Court of Appeals,
Fifth Circuit.

In the Matter of: David Orlando COLLINS, Debtor.
Wells Fargo Bank, Appellant,
v.
David Orlando Collins, Appellee.

No. 10–20658.

|
Aug. 15, 2011.

Attorneys and Law Firms

[Gino J. Rossini](#), Attorney, Hermes Sargent Bates, L.L.P., Dallas, TX, [Brian Scott Engel](#), Esq., Barrett, Daffin, Frappier, *315 Turner & Engel, L.L.P., Austin, TX, for Appellant.

[Eloise A. Guzman](#), Guzman Law Firm, Houston, TX, for Appellee.

Appeal from the United States District Court for the Southern District of Texas (09–CV–2483).

Before [SMITH](#), [SOUTHWICK](#), and [GRAVES](#), Circuit Judges.

Opinion

PER CURIAM: *

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the

limited circumstances set forth in 5TH CIR. R. 47.5.4.

****1** Wells Fargo Bank argues that it is entitled to attorneys' fees for the expenses it incurred while filing a proof of claim to correct the amount it was owed as part of the chapter 13 bankruptcy proceeding of its debtor, David Collins. Collins owed approximately \$100,000 to the bank under a promissory note dated March 1, 2001. The note was secured by a deed of trust that was executed the same day and gave the bank a lien on the house Collins purchased with the loan. The deed of trust also obligated Collins to “pay when due the principal of, and interest on, the debt evidenced by the Note.”

After missing ten monthly payments, Collins filed for chapter 13 bankruptcy protection. The bankruptcy court approved his confirmation plan, including a provision for ongoing mortgage payments to the bank while the bankruptcy case was pending. Consistently with the plan, Collins submitted a proof of claim evidencing the amount he owed the bank under the note. The bank thought Collins had understated the amount owed, however, so, it hired an attorney to prepare its own proof of claim in the correct amount. It submitted an application for the attorneys' fees it incurred to prepare the proof of claim, citing a provision of the deed of trust. The bankruptcy court rejected the fee application, and the district court affirmed. Each of those courts issued a detailed opinion explaining its reasons. See [In re Collins](#), No. 07–38246, 2009 WL 1607737, 2009 Bankr.LEXIS 1554 (Bankr.S.D.Tex. June 8, 2009), *aff'd sub nom. Wells Fargo Bank, N.A. v. Collins*, No. H:09–2483, 2010 WL 3303663, 2010 U.S. Dist. LEXIS 85195 (S.D.Tex. Aug. 19, 2010).

Under these limited and specific facts, we affirm for want of reversible error. We express no view on the various holdings and observations of the bankruptcy and district courts. We also observe that this is essentially a matter of contract interpretation and that any unresolved issues can be fixed in subsequent contracts.

The judgment of the district court, affirming the order of the bankruptcy court, is AFFIRMED.

All Citations

437 Fed.Appx. 314, 2011 WL 3568910